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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

CASE NO.

COMPLAINT FOR DAMAGES:

MICHAEL MOSES,

Plaintiff,

v.

Experian Information Solutions, Inc.;
Equifax, Inc.; AFNI, Inc.; CashCall, Inc.;
General Motors, LLC; Oportun Financial
Corporation and DOES 1 through 100
inclusive,

Defendants.

1. Violation of Fair Credit Reporting Act;
2. Violation of California Consumer Credit Reporting Agencies Act;
3. Violation of California Unfair Business Practices Act
4. Demand Exceeds \$10,000.00

COMES NOW Plaintiff MICHAEL MOSES, an individual, based on information and belief, to allege as follows:

INTRODUCTION

1. This case arises under the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b), California Consumer Credit Reporting Agencies Act, California Civil Code §1785.25(a), and California Business and Professions Code § 17200. Plaintiff seeks redress for the

1 unlawful and deceptive practices committed by the Defendants in connection with their
2 inaccurate reporting of Plaintiff's debt included in Plaintiff's Chapter 13 bankruptcy.

3 **JURISDICTION & VENUE**

- 4 2. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and
5 every paragraph above, fully set forth herein.
- 6 3. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 15 U.S.C. §
7 1681
- 8 4. This venue is proper pursuant to 28 U.S.C. §1391(b).

9 **GENERAL ALLEGATIONS**

- 10 5. Plaintiff filed for Chapter 13 bankruptcy protection on January 13, 2015 in order to
11 reorganize and repair Plaintiff's credit. Plaintiff's Chapter 13 bankruptcy was
12 confirmed on May 21, 2015.
- 13 6. On July 19, 2015 Plaintiff ordered a three bureau report from Equifax, Inc. to ensure
14 proper reporting.
- 15 7. Plaintiff noticed several tradelines all reporting a misleading and or inaccurate balance,
16 past due balance, and or monthly payment owed on the account and or listing of the
17 account as repossessed rather than included in Bankruptcy.
- 18 8. In response Plaintiff disputed the inaccurate tradelines via certified mail with Experian
19 Information Solutions, Inc.; Equifax, Inc.; and TransUnion, LLC.
- 20 9. Plaintiff is informed and believes that each credit reporting agency sent each
21 Defendant notification that plaintiff was disputing the accuracy of what it was reporting
22 to them.
- 23 10. Defendants AFNI, Inc.; CashCall, Inc.; General Motors, LLC and Oportun Financial
24 Corporation failed to conduct a reasonable investigation and reported falsely to
25 Experian Information Solutions, Inc. and Equifax, Inc. a misleading and or inaccurate
26 balance, past due balance, and or monthly payment owed on the account and or listing
27 of the account as repossessed rather than included in Bankruptcy.
- 28

1 11. Equifax, Inc. failed to perform its own reasonable investigation and failed to correct
2 the inaccuracies and failed to note that Plaintiff disputed the information. After the
3 statutory time period passed for Equifax, Inc. to update the report Plaintiff pulled a
4 second credit report and noticed that no updates had been made to the tradeline in
5 dispute.

6 12. Experian Information Solutions, Inc. failed to perform its own reasonable investigation
7 and failed to correct the inaccuracies and failed to note that Plaintiff disputed the
8 information as Plaintiff received a reinvestigation report from Experian Information
9 Solutions, Inc. that failed to properly address the inaccuracies.

10 13. On November 22, 2015 Plaintiff ordered a second three bureau report from Experian
11 Information Solutions, Inc. to ensure proper reporting.

12 14. Plaintiff's account was in dispute but the furnisher; Experian Information Solutions,
13 Inc. and Equifax, Inc. failed to correct the misleading and or inaccurate statements on
14 the account within the statutory time frame or at all.

15 15. The credit bureaus have an obligation to delete the tradeline when a response is not
16 received by the furnisher within the statutory time frame.

17 16. The actions of the Defendants as alleged herein are acts in violation of the Fair Credit
18 Reporting Act, 15 U.S.C. § 1681s-2(b).

19 17. The actions of the Defendants as alleged herein are acts in violation of the consumer
20 credit reporting agencies act California Civil Code § 1785.25(a).

21 18. The actions of the Defendant as alleged herein are acts in violation of the California
22 Business and Professions Code § 17200.

23 **FIRST CAUSE OF ACTION**

24 (Violation of Fair Credit Reporting Act
25 15 U.S.C. § 1681s-2(b))
(Against Defendants and Does 1-100)

26 **Experian Information Solutions, Inc. and Equifax, Inc. - Failure to Reinvestigate Disputed
27 Information.**

28 19. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
above as though fully set forth herein.

1 20. After plaintiff disputed the accounts mentioned above, defendants Experian Information
2 Solutions, Inc. and Equifax, Inc. were required to conduct a reasonable investigation and
3 to delete any information that was not accurate. In doing so, defendants were required to
4 send all relevant information to the furnishers which they did not do based on the
5 reinvestigation report Plaintiff received.

6 21. In its reinvestigation report Experian Information Solutions, Inc. failed to update the
7 misleading and or inaccurate balance, past due balance, and or monthly payment owed on
8 the account and or listing of the account as repossessed rather than included in
9 Bankruptcy.

10 **AFNI, Inc.; CashCall, Inc.; General Motors, LLC and Oportun Financial Corporation –**
11 **Reporting Inaccurate Information to Defendants Experian Information Solutions, Inc.**
12 **and Equifax, Inc. and Failure to Reinvestigate.**

13 22. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
14 above as though fully set forth herein.

15 23. 15 USC 1681s-2 prohibits furnishers from providing any information relating to a
16 consumer to any consumer reporting agency if the person knows or has reasonable
17 cause to believe that the information is inaccurate or misleading and requires a
18 furnisher to update and or correct inaccurate information after being notified by a
19 consumer reporting agency of a dispute by a consumer.
20

21 24. Defendants AFNI, Inc.; CashCall, Inc.; General Motors, LLC and Oportun Financial
22 Corporation violated section 1681s-2 by failing to conduct a reasonable investigation
23 and re-reporting a misleading and or inaccurate balance, past due balance, and or
24 monthly payment owed on the account and or listing of the account as repossessed
25 rather than included in Bankruptcy. Defendants Experian Information Solutions, Inc.
26 and Equifax, Inc. provided notice to the defendants that Plaintiff was disputing the
27
28

1 inaccurate or misleading information but each of the furnishers failed to conduct a
2 reasonable investigation of the information as required by the FCRA.

3 25. Defendant AFNI, Inc. supplied inaccurate and misleading to the Credit Reporting
4 Agencies by reporting, after Plaintiff's chapter 13 filing and confirmation of the
5 repayment plan, that the account was past due and a balance was still owed to
6 Defendant AFNI, Inc., despite the treatment of its claim under the terms of Plaintiff's
7 confirmed chapter 13 repayment plan.
8

9 26. Defendant CashCall, Inc. supplied inaccurate and misleading to the Credit Reporting
10 Agencies by reporting, after Plaintiff's chapter 13 filing and confirmation of the
11 repayment plan, that the account was charged off despite the treatment of its claim
12 under the terms of Plaintiff's confirmed chapter 13 repayment plan.
13

14 27. Defendant General Motors, LLC supplied inaccurate and misleading to the Credit
15 Reporting Agencies by reporting, after Plaintiff's chapter 13 filing and confirmation of
16 the repayment plan, that the account still had monthly payments associated with it,
17 despite the treatment of its claim under the terms of Plaintiff's confirmed chapter 13
18 repayment plan.
19

20 28. Defendant Oportun Financial Corporation supplied inaccurate and misleading to the
21 Credit Reporting Agencies by reporting, after Plaintiff's chapter 13 filing and
22 confirmation of the repayment plan, that a balance was still owed on the account
23 despite the treatment of its claim under the terms of Plaintiff's confirmed chapter 13
24 repayment plan.
25

26 **SECOND CAUSE OF ACTION**

27 (Violation of California Consumer Credit Reporting Agencies Act
28 California Civil Code § 1785.25(a))
(Against Defendants and Does 1-100)

AFNI, Inc.; CashCall, Inc.; General Motors, LLC and Oportun Financial Corporation – Reporting Inaccurate Information to Defendants Experian Information Solutions, Inc. and Equifax, Inc.

29. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

30. Defendants AFNI, Inc.; CashCall, Inc.; General Motors, LLC and Oportun Financial Corporation intentionally and knowingly reported a misleading and or inaccurate balance, past due balance, and or monthly payment owed on the account and or listing of the account as repossessed rather than included in Bankruptcy to Experian Information Solutions, Inc. and Equifax, Inc. Plaintiff alleges that Creditors re-reported a misleading and or inaccurate balance, past due balance, and or monthly payment owed on the account and or listing of the account as repossessed rather than included in Bankruptcy to Experian Information Solutions, Inc. and Equifax, Inc. in violation of California Civil Code § 1785.25(a).

31. Plaintiff also alleges that Creditors had reason to know that the information reported on Plaintiff's accounts were misleading and or inaccurate.

32. Plaintiff alleges that the bankruptcy notices, disputes letters from all three credit reporting agencies, the consumer data industry resource guide, and results of its investigation should have provided notice to Defendants of its misleading and or inaccurate reporting.

33. Creditors failed to notify Experian Information Solutions, Inc. and Equifax, Inc. that the information Defendants re-reported was inaccurate before the end of 30 business days, in violation of California Civil Code § 1785.25(a).

1 34. Creditor's communications of false information, and repeated failures to investigate,
2 and correct their inaccurate information and erroneous reporting were done knowingly,
3 intentionally, and in reckless disregard for their duties and Plaintiff's rights.

4 35. As a direct and proximate result of Creditor's willful and untrue communications,
5 Plaintiff has suffered actual damages including but not limited to inability to properly
6 reorganize under Chapter 13, reviewing credit reports from all three consumer reporting
7 agencies, time reviewing reports with counsel, sending demand letters, diminished
8 credit score, and such further expenses in an amount to be determined at trial.

9 36. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

10
11 **THIRD CAUSE OF ACTION**

12 (Unfair Business Practices Act
13 California Business and Professions Code § 17200)
14 (Against Defendant Creditors and Does 1-100)

15 37. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and
16 every paragraph above, as though fully set forth herein.

17 38. Plaintiff brings this action in individual capacity and on behalf of the general public.

18 39. Creditors at all times relevant to this Complaint were engaged in the business of
19 collections and providing services on credit to qualified applicants.

20 40. Commencing on or about January 31, 2015 and continuing to the present, Creditors
21 committed the acts of unlawful practices as defined by Business and Professions Code
22 § 17200 and described in the above stated Causes of Action.

23 41. These unlawful business practices of the Creditors are likely to continue and therefore
24 will continue to injure Plaintiff and mislead the public by inaccurate record keeping,
25 failure to correct inaccuracies and erroneous dissemination of inaccurate information,
26 and present a continuing threat to the public.

27 42. Creditor's acts and practices described above were unlawful under the California Civil
28 Code § 1785.25(a) and therefore unlawful business practices within the meaning of
Business and Professions Code § 17200.

43. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- a. For preliminary and permanent injunctive relief to stop Defendants from engaging in the conduct described above;
- b. Award statutory and actual damages pursuant to 15 U.S.C. § 1681n and California Civil Code § 1785.31;
- c. Award punitive damages in order to deter further unlawful conduct pursuant to 15 U.S.C. § 1681n; and California Civil Code § 1785.31
- d. Award \$2,500 in civil penalties pursuant to California Business & Professions Code § 17206;
- e. Award attorney's fees and costs of suit incurred herein pursuant to 15 U.S.C. § 1681n & o; California Civil Code § 1785.31;
- f. For determination by the Court that Creditor's policies and practices are unlawful and in willful violation of 15 U.S.C. § 1681n, et seq.; and California Business and Professions Code § 17200, et seq.;
- g. For determination by the Court that Creditor's policies and practices are unlawful and in negligent violation of 15 U.S.C. § 1681o;

Dated: December 3, 2015

SAGARIA LAW, P.C.
By: /s/ Elliot Gale
Scott Sagaria, Esq.
Elliot Gale, Esq.
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of this matter by jury.

Dated: December 3, 2015

SAGARIA LAW, P.C.
/s/ Elliot Gale
Scott Sagaria, Esq.
Elliot Gale, Esq.
Attorneys for Plaintiff